

S. E. asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Marlowe's decision regarding Ms. E.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

### **BACKGROUND AND ISSUE PRESENTED**

Ms. E. seeks workers' compensation benefits from Reams Food Stores and its insurance carrier, Fremont Compensation Insurance (referred to jointly as "Reams" hereafter), for injuries she suffered while working for Reams on March 9, 2001. Judge Poelman held an evidentiary hearing in this matter on September 30, 2002, but then retired from the Commission before taking any further action or issuing a decision. The case was reassigned to Judge Marlowe.

Judge Marlowe appointed a medical panel to consider the medical aspects of Ms. E.'s claim. The panel submitted its report on December 29, 2004. On June 27, 2005, Judge Marlowe issued her decision ordering Reams to pay Ms. E.'s medical expenses, but denying Ms. E.'s claim to any additional temporary total or permanent partial disability compensation.

On review, Ms. E. argues that Judge Marlowe erred in finding that Ms. E. was medically stable on September 9, 2001, and in terminating Ms. E.'s temporary total disability compensation as of that date.

### **FINDINGS OF FACT**

The Appeals Board affirms and adopts Judge Marlowe's findings of fact. As relevant to the issue presented by Ms. E.'s motion for review, the facts can be summarized as follows.

While working for Reams on March 9, 2001, Ms. E. experienced pain in her right low back and hip as she lifted a case of frozen orange juice. Over the next several years, she sought medical attention from several chiropractors and physicians and also underwent various diagnostic procedures.

Ms. E. was examined by Dr. Moress on September 10, 2001, on behalf of Reams. Dr. Moress diagnosed chronic lumbosacral mechanical pain, but concluded that Ms. E. had reached medical stability. Dr. Moress's opinion was disputed by Ms. E.'s treating physicians.

In light of this difference of medical opinion, Judge Marlowe appointed Dr. Holmes to evaluate the medical aspects of Ms. E.'s claim. Dr. Holmes reviewed all of Ms. E.'s relevant medical records, as well as the prior opinions of other medical experts. Dr. Holmes also personally examined Ms. E.. Dr. Holmes then concluded that Ms. E. suffered from chronic right sacroiliac joint pain as a result of her work accident at Reams and that she had reached medical stability by

September 9, 2001.

Judge Marlowe accepted the opinions of Dr. Moress and Dr. Holmes that Ms. E. had reached medical stability by September 9, 2001. On that basis, Judge Marlowe concluded that Ms. E. was not entitled to temporary total disability compensation after September 9, 2001.

### **DISCUSSION AND CONCLUSIONS OF LAW**

There is no dispute that Ms. E.'s injuries are work-related and, as such, compensable under the Utah Workers' Compensation Act. The only issue in dispute is the length of time Ms. E. is entitled to receive temporary total disability compensation.

Section 34A-2-410(1)(a) of the Act, which governs awards of temporary total disability compensation, provides that "in case of temporary disability, so long as the disability is total, the employee shall receive (compensation) . . . ." In *Booms v. Rapp*, 720 P. 2d 1363, 1366 (Utah 1986), the Utah Supreme Court ruled that "once a claimant reaches medical stabilization, the claimant is moved from temporary to permanent status and he is no longer eligible for temporary benefits." Thus, Ms. E.'s eligibility for temporary total disability compensation ends when she reaches medical stability.

The Appeals Board has considered the medical evidence regarding the date of Ms. E.'s medical stability and finds Dr. Holmes' opinion to be persuasive. Dr. Holmes was not affiliated with either party. He was privy to Ms. E.'s entire medical record and the opinions of other medical experts who had treated or evaluated her. Dr. Holmes also had the opportunity to personally examine Ms. E.. For these reasons, the Appeals Board accepts Dr. Holmes' finding that Ms. E. reached medical stability by September 9, 2001.

The Appeals Board notes Ms. E.'s arguments that she could not have reached medical stability by September 9, 2001, because her condition had not yet been properly diagnosed and she was still receiving medical care. However, these facts are not necessarily contrary to the conclusion that Ms. E. was medically stable by September 9, 2001. As noted above, Dr. Holmes was fully aware of the history of Ms. E.'s diagnosis and treatment, and concluded that she was, in fact, medically stable by September 9, 2001.

In summary, the Appeals Board finds Ms. E. was medically stable by September 9, 2001. Consequently, she is entitled to temporary total disability compensation only until that date. Because Reams has already paid compensation to September 9, 2001, no additional compensation is due. However, Ms. E. is entitled to continued medical benefits as provided by the ALJ's order.

### **ORDER**

The Appeals Board affirms Judge Marlowe's decision and denies Ms. E.'s motion for review. It is so ordered.

Dated this 9<sup>th</sup> day of February, 2006.

---

Colleen S. Colton, Chair

---

Patricia S. Drawe

---

Joseph E. Hatch